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Attorney for Plaintiff, JOSHUA ASSIFF

8
9 UNITED STATES DISTRICT COURT
10
11 CENTRAL DISTRICT OF CALIFORNIA

12 **JOSHUA ASSIFF,**

13 **Plaintiff,**

14 **v.**

15 **COUNTY OF LOS ANGELES;
16 SHERIFF DEPUTY BADGE
NUMBER 404532;
17 And DOES 1 through 10,**

18 **Defendants.**

Case No. 2:22-cv-05367 RGK (MAAx)

**DECLARATION OF THOMAS M.
FERLAUTO IN SUPPORT OF
PLAINTIFF'S MOTIONS IN LIMINE
NO. 1 AND 2**

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to: Hon. R. Gary Klausner,
District Judge, Courtroom 850

I, Thomas M. Ferlauto, declare as follows:

1. This declaration is submitted in support of Plaintiff's motions in limine #1 and #2. I am an attorney licensed to practice law in the State of California, and I am Plaintiff's counsel of record herein. Consequently, I have personal knowledge of the following:

2. According to Plaintiff's complaint: Plaintiff is a 21-year old black male and a student at Antelope Valley College where he plays basketball. Plaintiff was driving from his home to a teammate's house in order to carpool to basketball practice.

1 For no apparent reason and without probable cause, KELLY, a male Caucasian
2 motorcycle Sheriff deputy, pulled Plaintiff over. For no apparent reason and without
3 probable cause, KELLY – as well as other deputies who subsequently responded to
4 the call – all tasered, choked, pepper sprayed, beat and arrested Plaintiff. Plaintiff
5 has asserted two causes of action – the First Cause of Action against KELLY for
6 violation of 42 USC § 1983 (arrest without probable cause and with excessive force),
7 and the Second Cause of Action against COUNTY OF LOS ANGELES for violation
8 of 42 USC § 1983 (*Monell* liability).

9 2. Plaintiff has complied with all of his discovery obligations. Plaintiff
10 appeared for his deposition and gave testimony on April 14, 2023. Plaintiff made his
11 expert witness disclosure -- including expert witness report -- in a timely fashion on
12 May 10, 2023.

13 3. Defendants have not complied with their discovery obligations.

14 4. The discovery cut-off in this action was and is May 10, 2023.

15 5. On March 31, 2023, Plaintiff properly noticed the deposition of the
16 persons most knowledgeable at COUNTY OF LOS ANGELES about 9 certain
17 relevant topics for April 26, 2023. Plaintiff offered to reset the deposition for any
18 mutually agreeable date prior to the discovery cut-off. Attached hereto as **Exhibit 1**
19 is a true and accurate copy of the deposition notice.

20 6. Defendants failed to offer alternative deposition dates prior to the
21 discovery cut-off for Defendant the COUNTY OF LOS ANGELES, and Defendant
22 the COUNTY OF LOS ANGELES failed to appear for its scheduled deposition on
23 April 26, 2023. Attached hereto as **Exhibit 2** is the Affidavit of Nonappearance of
24 Defendant COUNTY OF LOS ANGELES.

25 7. On May 10, 2023, Defendants brought an ex parte application seeking
26 to continue the trial date and other pre-trial deadlines.

27 8. On May 12, 2023, the Court denied Defendants' motion to continue trial
28 and other pre-trial deadlines, but permitted the parties to agree to conduct the

1 depositions of the Defendants (who failed to appear at their noticed depositions) after
2 the discovery cut-off.

3 9. In response to the Court order, Defendants produced Defendant KELLY
4 for his deposition. However, Defendants have not produced any witnesses for the
5 COUNTY OF LOS ANGELES on the 9 issues identified in the deposition notice.
6 Counsel for Plaintiff met and conferred with counsel for Defendants on dates.
7 Plaintiff offered a wide selection of dates for the depositions. Plaintiff's only
8 requirement was that whichever date is selected that sufficient time (7 hours) be
9 available for questioning.

10 10. Defendants failed to offer witnesses on all topics, and failed to offer any
11 witnesses with sufficient time for questioning. Defendants offered a partial date with
12 limited time for questioning for one witness on one topic and a partial date with
13 limited time for questioning for another witness on another topic – and at a time
14 Plaintiff's counsel was not available. It is difficult to determine what was actually
15 offered, because Defendants refused to identify witnesses according to the topic
16 numbers as set forth in the deposition notice. Plaintiff's counsel continued to request
17 dates for these depositions, but Defendant stopped responding and no other dates
18 were ever offered. No witnesses were ever produced.

19 11. Attached hereto as **Exhibit 3** is a true and accurate copy of the expert
20 report of Defendant's police use of force expert. This report is filled with opinions
21 that lack sufficient evidentiary foundation, cannot be stated to any reasonable
22 scientific probability, are improper credibility and/or evidence weighing opinions,
23 and, thus, are speculative, not helpful to the jury, and are not admissible. His opinions
24 will not assist the jury in determining whether the purported conduct was
25 constitutional. His report is permeated with improper legal conclusions such as
26 probable cause.

27 12. On June 8, 2023. I attempted to meet and confer with Defendants'
28 counsel on these motions. Attached to this email as **Exhibit 4** is a true and accurate

1 copy of an email that I sent on June 8, 2023. Defendants' counsel never responded
2 to the issues raised by my email, and no agreement could be reached.
3

4 I declare under penalty of perjury under the laws of the State of California and
5 the United States of America that the foregoing is true and correct. Executed this
6 12th day of June, 2023 in Orange County, California.
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10 THOMAS M. FERLAUTO

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